

OPINION & ORDER
[Resolving Doc. Nos. 1, 14]

After analyzing Petitioner's motion, on July 16, 2007, Magistrate Judge Gallas recommended that the Court deny the Petitioner's request as statutorily untimely. [Doc. 7.] The Federal Magistrates Act requires a district court to conduct a *de novo* review only of those portions of the Report to which an objection has been made. 28 U.S.C. § 636(b)(1). *See also Thomas v. Arn*, 474 U.S. 140 (1985). As noted in Magistrate Judge Gallas's Report and Recommendation, any objections must be filed with the Clerk of Court within ten days of the report's issuance. [Doc. 14]

Case No. 4:04-CV-1690
Gwin, J.

at 10.] Parties waive their right to appeal the Magistrate Judge's Recommendation if they fail to object within the time allowed. *Id.* (citations omitted).

Here, more than ten days have elapsed from the re-issuance of Magistrate Judge Gallas's Report and Recommendation and neither party has objected. Having conducted its own review of Petitioner's request, Respondent's opposition, and Magistrate Judge Gallas's Report and Recommendation, the Court agrees with the conclusions of the magistrate and adopts the Report and Recommendation as its own. Therefore, the Court incorporates Magistrate Judge Gallas's findings of fact and conclusions of law fully herein by reference. Accordingly, the Court denies Petitioner's Section 2255 motion.

Conclusion

For the reasons discussed above, the Court **ADOPTS** the Report and Recommendation of the Magistrate Judge and **DENIES** Petitioner's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. Section 2255. [Docs. 1, 14.] Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith and that no basis exists upon which to issue a certificate of appealability. *See* 28 U.S.C. § 2253(c). *See also* FED. R. APP. P. 22(b).

IT IS SO ORDERED.

Dated: August 2, 2007

s/ James S. Gwin

JAMES S. GWIN
UNITED STATES DISTRICT JUDGE